

PRELIMINARY DRAFT: CLAIM 9 – RICHARD RUSCITTI

ATTORNEY WORK PRODUCT

Caveat: All information herein is provided upon information and belief.

Claims Against Richard Ruscitti

Claim 9 – Name: Richard Ruscitti (South Chicago Nissan Inc. d/b/a Western Avenue Nissan)

Defendant: Richard Ruscitti

Claim Type: Wrongful Termination; Failure to Pay Dividends; Oppression of Minority Shareholder; Defamation; Fraud; Falsifying Documents; Embezzlement.

Preliminary Range of Estimated Damages: \$4.1M+

Summary:

I. Ownership:

1. Michael Helmstetter (Helmstetter) has at least a 25% ownership interest in South Chicago Nissan Inc.
2. Richard Ruscitti (Ruscitti), the majority shareholder, disputes Helmstetter's ownership interest.
3. On September 29, 2009, Ruscitti proposed Helmstetter get 25% of the ownership in South Chicago Nissan Inc.¹.
4. At a Special Meeting of Directors on February 2, 2010, Helmstetter was awarded 250 shares of common stock, representing a 25% interest in South Chicago Nissan Inc.²
5. Ruscitti sent Helmstetter copies of his stock certificates in South Chicago Nissan Inc. on February 12, 2010³.

¹ HELMSWAV000001

² HELMSWAV000002

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6. An IRS transcript of Helmstetter's 2010 Tax Return shows a K-1⁴ was issued to Helmstetter in 2010, indicating he had a partnership interest that was recognized by South Chicago Nissan Inc. at that time.
7. Interestingly, Helmstetter did not receive any K-1's from South Chicago Nissan Inc. after 2010.
8. A document dated August 22, 2011⁵, indicates that Ruscitti purchased the 24% ownership in South Chicago Nissan Inc. from the now late Gerald Gleason (Gleason), effectively increasing his ownership interest from 51% to 75%.
9. Helmstetter has a different recollection of events and states that Gleason was critically ill in hospital on August 22, 2011 and was not in the office to sign the document and to have it notarized.
10. Helmstetter believes Gleason's signature to have been forged on this document.
11. Helmstetter also denies having signed the document himself.
12. Gleason passed away on August 27, 2011⁶.
13. Even if the sale of Gleason's shares to Ruscitti is valid, Ruscitti would only own 75% of South Chicago Nissan Inc. and not the 100% he claims to own.
14. Helmstetter still owns his 25% share in the company.
15. On October 13, 2011, Ruscitti notified Nissan of the change in ownership, representing he had 75% ownership in South Chicago Nissan Inc. and Helmstetter had the remaining 25%⁷.

³ HELMSWAV000003 to HELMSWAV000005

⁴ HELMSWAV000007

⁵ HELMSWAV000010 to HELMSWAV000011

⁶ HELMSWAV000012

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II. Loss of Earnings:

1. In August 2014, Ruscitti fired Helmstetter from Western Avenue Nissan and falsely accused him of committing fraud against Kingdom Chevrolet (which fraud was, in fact, perpetrated by a third party), and, by so doing, defamed Helmstetter, directly harming his reputation in the auto dealership industry.
2. Ruscitti's wrongful termination of Helmstetter's employment resulted in Helmstetter's loss of earnings estimated to be at least \$1.1M.

III. Loss of Dividend Distributions:

1. Western Avenue Nissan's financial statements from January 1, 2015 through December 31, 2015⁷ show dividends totaling approximately \$3.9M.
2. Helmstetter did not receive payment of his appropriate pro rata share of the dividends.

⁷ HELMSWAV000013 to HELMSWAV000014

⁸ HELMSWAV000015 to HELMSWAV000086

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IV. Overstatement of Expenses –Falsified Rent:

1. Western Avenue’s financial statements from January 2015 through December 31, 2015 show rent paid of \$470K⁹, which is \$326K in excess of rent of the \$144K payable per year that Helmstetter recalls the dealership having paid.

V. Indicia of Doctored Financial Statements:

1. Kingdom Chevrolet’s financial statements presented to Helmstetter for the period January 2015 through May 2016 contain numerous indicia of having been doctored

VI. Preliminary Estimated Economic Damages: \$4.1M+

1. An estimated \$1.6M representing Helmstetter’s 25% share of the Fair Market Value of South Chicago Nissan, Inc.
2. An estimated \$1.1M in unpaid salary and bonuses due to Helmstetter by South Chicago Nissan Inc.
3. An estimated \$1.3M in unpaid dividends being Helmstetter’s 25% pro rata share of dividends paid to Ruscitti in 2015, with additional dividends (believed to be material) to be determined for 2011-2014 and 2016 to date.
4. An estimated \$82K representing Helmstetter’s 25% share of rent in excess of the lease agreement.

⁹ HELMSWAV000082

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5. Helmstetter's share of 25% of Reinsurance Business with CNA and any other reinsurance companies, to be determined and believed to be material.
6. Counterclaim for Consequential Damages created by Ruscitti, to be determined and believed to be material.

VII. Supporting Documents:

1. **HELMSWAV000001** – Sept 2009 South Chicago Nissan Proposed Revised Ownership Plan
2. **HELMSWAV000002** – Feb 2010 Record of Special Meeting of Board of Directors of South Chicago Nissan Inc.
3. **HELMSWAV000003-HELMSWAV000005** – Feb 2010 Stock certificates for South Chicago Nissan
4. **HELMSWAV000006-HELMSWAV000009** – Dec 2010 IRS Transcript for Michael Helmstetter
5. **HELMSWAV000010-HELMSWAV000011** – Aug 2011 Consent Action of the Board of Directors and Shareholders of South Chicago Nissan Inc.
6. **HELMSWAV000012** – Aug 2011 Obituary of Gerald Gleason
7. **HELMSWAV000013-HELMSWAV000014** – Oct 2011 Amendment No. 3 to Nissan Dealer Sales and Service Agreement between the Nissan Division of Nissan North America, Inc. and South Chicago Nissan
8. **HELMSWAV000015-HELMSWAV000020** – Jan 2015 Nissan Financial Statement
9. **HELMSWAV000021-HELMSWAV000026** – Jan 2015-Feb 2015 Nissan Financial Statement

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10. HELMSWAV000027-HELMSWAV000032 – Jan 2015-March 2015 Nissan Financial

Statement

11. HELMSWAV000033-HELMSWAV000038 – Jan 2015-Apr 2015 Nissan Financial

Statement

12. HELMSWAV000039-HELMSWAV000044 – Jan 2015-May 2015 Nissan Financial

Statement

13. HELMSWAV000045-HELMSWAV000050 – Jan 2015-Jun 2015 Nissan Financial

Statement

14. HELMSWAV000051-HELMSWAV000056 – Jan 2015-Jul 2015 Nissan Financial

Statement

15. HELMSWAV000057-HELMSWAV000062 – Jan 2015-Aug 2015 Nissan Financial

Statement

16. HELMSWAV000063-HELMSWAV000068 – Jan 2015-Sep 2015 Nissan Financial

Statement

17. HELMSWAV000069-HELMSWAV000074 – Jan 2015-Oct 2015 Nissan Financial

Statement

18. HELMSWAV000075-HELMSWAV000080 – Jan 2015-Nov 2015 Nissan Financial

Statement

19. HELMSWAV000081-HELMSWAV000086 – Jan 2015-Dec 2015 Nissan Financial

Statement